IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
CRIMINAL APPEALLTE JURISDICTION.

CRIMINAL APPEAL NO. 619 OF 2000

Nagnath @ Nagraj Dhondiba Deshmukh. ....Appellant.
(Orig.Accd.)

V/s

1)The State of Maharashtra ....
Respondents.

Mr.B.P.Jakhade, Adv. for the appellant.

Dr.F.R.Shaikh, APP for the State.

CORAM: V.G. PALSHIKAR
AND
SMT.NISHITA MHATRE, J.

5th Oct., 2006.

ORAL JUDGMENT: (Per Palshikar, J.)
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Being aggrieved by the judgment and order of conviction and sentence passed by the learned Additional Sessions Judge, Greater Bombay in Sessions Case No.1367 of 1999 on 19.12.2001 the appellant-accused has preferred this appeal on the grounds mentioned in the memo of appeal as also verbally canvassed before us.

2. With the assistance of the learned Advocate for the appellant as also the learned Public Prosecutor we have scrutinized the entire evidence on and reappreciated the same.

3. The prosecution story stated briefly is that on 19.7.1999 accused

Nagnath, Biru Jaspalsingh, Deepak and Arun had done the labour work of coolie. Biru had given Deepak and Arun their respective shares in the earnings. Arun and Deepak left for Nagpada whereas Biru and the accused stayed back to take the amount required for liquor. It seems that there was some quarrel between the accused and the deceased on the point of sharing of the earning. Late in the night, Biru returned to Byculla Bridge so did the accused. The other persons who had gone to movie and who would also sleep under the bridge, also returned late in the night which included P.W.3-Shankar Kalyan Padaji and PW 7-Chandrakant Ashok Tambe. Out of these persons, some of them started playing cards, which they played till morning. At about 5.30 a.m. According to the prosecution because of some quarrel which had ensued on 19.7.1999 the accused came with big stone and smashed it on the head of Biru who was sleeping which resulted into death of Biru. According to the prosecution Shankar Padachi, Chandrakant Tambe and Vishvanath Koli had witnessed this fact. In the morning Amarnath Tukaram Jakka came to the scene of offence when Vishvanath Koli told him that accused Narayan had killed Biru by smashing head of Biru with a stone. Thereafter Amarnath Jakka and two other persons went to police station and lodged a complaint. At about 8.10 a.m. On 20.7.1999 PSI More registered the First Information Report. The prosecution in all examined 10 witnesses to prove its case. On

appreciation of that evidence the learned trial Judge came to the conclusion of guilt and convicted and sentenced the accused as aforesaid. This order of conviction is assailed in this appeal on several grounds. Basically the contention of the learned counsel appearing on behalf of the appellant is that though FIR was lodged on 20.7.1999 statement of the accused persons were recorded 10 days thereafter or a month thereafter. There is no reason why statements were recorded so belatedly. Secondly according to the learned counsel accused was arrested on 16.8.1999 26 days after the incident. His clothes were seized and which are alleged to have blood stains. It is difficult to believe, according to the learned counsel, that a man would wear the same clothes for 26 days. Particularly evidence of PW 3-Shankar Padaji and PW 7-Chandrakant Tambe as eye witnesses was seriously questioned and infirmities in the evidence were pointed out.

4. The learned additional public prosecutor defended the impugned order by saying that mere delay in recording of statements may not be fatal to the prosecution case. The delay could have been caused by several reasons. The witnesses may not be traceable. According to him, the eye witness account is substantial enough for sustaining the order of conviction. We have to examine these rival contentions in the light of evidence as reappreciated by us.

5. According to Pws 3 and 7 they with some more colleagues had

formed a syndicate and they used to share their earnings of the day amongst themselves. Quarrel ensued on 19.7.1999 in the night regarding distribution of that amount. The witnesses then say that thereafter they played cards, both the accused and the victim were included in the play. Witnesses left at 4.00 a.m. On 20.7.1999 and after some time they saw that the accused lifted a stone and hit the deceased by that stone and thereafter the accused ran away. If this is a fact, there is no reason why FIR is not lodged by either of them. The FIR is lodged by P.W.1-Amarnath who states that he cited dead body under the Byculla bridge. Not only on that day but for 11 days P.W.3-Shankar does not say that he has witnessed the assault. He only states so when his statement is recorded by the police on 30.7.1999. The statement of P.W.7-Chandrakant was recorded on 23.8.1999. Except on that day he also did not disclose the incident to anybody. This conduct on the part of the witness is highly unnatural. It is against human conduct that a human being who sees brutal attack on his acquaintance will not say anything about it to anybody.

6. Their depositions also are cryptic and appear to be patch work. It is necessary in this case note that FIR was registered on 20.7.1997, police were investigating thereafter and they found nothing till this statement was recorded on 30.7.1999 of P.W.3-Shankar. The possibility of the witness being put up by the prosecution cannot be

over ruled. Except for the testimonies of these two witnesses there is no evidence whatsoever which can connect the accused to the death of the victim. That it was homicidal death is proved on record but homicidal death was committed by the accused is not proved in any manner by the prosecution, even via eye witnesses. It is highly improbable and therefore difficult to believe that people play cards till early morning and then sleep and yet sleep would be so light that they are awaken and witness the assault and allow the assailant to run away. In our opinion, the learned trial Judge acted incorrectly in accepting the testimonies of these witnesses. The totality of circumstances proved by the prosecution creates serious doubt about the exact happening in the night of 19/20.7.1999. In the absence of any such clear picture it is difficult to uphold the conviction on surmises and inferences drawn from the testimonies of Pws 6 and 7. In our opinion, the prosecution has miserably failed to prove that the accused was the person who committed the murder of the deceased. In the result, therefore, the appeal succeeds and is allowed. The appellant-accused Nagnath @ Nagraj Dhondiba Deshmukh is in jail. He be set at liberty forthwith unless otherwise required.